

APPEAL NO. 020931  
FILED MAY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held March 21, 2002. The hearing officer resolved the issue before him by determining that the respondent/cross-appellant's (claimant) compensable injury of \_\_\_\_\_, was a producing cause of his current back problem, a recurrent herniated disc at L5-S1, after \_\_\_\_\_.<sup>1</sup> The appellant/cross-respondent (carrier) appealed, challenging, on sufficiency grounds, whether the claimant proved that his compensable injury was a "producing cause" of his current problems by a preponderance of the evidence. The carrier also appealed based on an argument that the hearing officer did not apply the proper legal standard in examining whether the claimant's current condition was to be considered part of his 1998 compensable injury. The claimant also appealed; however, the claimant does not clarify on what grounds he is appealing. The hearing officer resolved the sole issue in favor of the claimant. Therefore, the claimant is not aggrieved and we need not discuss the claimant's appeal further. The carrier responded to the claimant's appeal and argued that his appeal should be dismissed because he had no grounds to appeal. The claimant did not respond to the carrier's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of \_\_\_\_\_, was a producing cause of his current back problem, a recurrent herniated disc at L5-S1, after \_\_\_\_\_, when the claimant's symptoms became markedly more severe. The claimant testified, and the medical records support, that after his 1998 injury [also a herniated disc at L5-S1 with radiculopathy into the right leg], he tried conservative therapy, but ultimately had to have surgery for his herniated disc in August 2000. Both the claimant's testimony and the medical evidence indicate that the claimant received continuing care for his low back between the 1998 compensable injury and the \_\_\_\_\_, "incident" at work, when his low back symptoms began to worsen. The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). While the carrier introduced conflicting evidence on the issue,<sup>2</sup> upon our review of the record, we conclude that the hearing officer's determination is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

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<sup>1</sup>The claimant alleged that his low back pain became significantly worse after attempting to help move a heavy object at work on this date.

<sup>2</sup>The carrier argued that the \_\_\_\_\_, incident causing the claimant increased back pain in fact created a new injury, and that the claimant's 1998 compensable injury had fully resolved.

The carrier argues on appeal that the hearing officer used an incorrect standard in determining whether the claimant's current low back problems were a part of his compensable injury of 1998. The carrier argues that rather than a "producing cause" standard, the hearing officer should have used a "preponderance of the evidence" standard. We reject the carrier's argument. The hearing officer properly applied the legal standard: whether the claimant proved by a preponderance of the evidence that his 1998 compensable injury was a producing cause of his current symptomology. The claimant did not, as argued by the carrier, have the burden to again prove his compensable injury. The issue at the CCH was the extent of the claimant's 1998 compensable injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge